

HONG KONG / JUDGMENT

RMH v. GY**[2020] HKFC 275****COURT**

Family Court

DECIDED

30 December 2020

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**[2020] HKFC 275 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION MATRIMONIAL CAUSES NUMBER 38 OF 2020**

IN THE MATTER OF an Application under Sections 10, 13, 23, 24 and 26 of the Guardianship of Minors Ordinance, Cap 13 AND IN THE MATTER OF W, a minor BETWEEN RMH The Applicant and GY The Respondent

Coram: His Honour Judge I Wong in Chambers (Not open to Public) Date of Hearing: 15 September 2020 Date of the Respondent s Submissions: 22 September 2020 Date of the Applicant s Submissions: 29 September 2020 Date of Judgment: 30 December 2020

J U D G M E N T (Interim Maintenance and Litigation Funding under Guardianship of Minors Ordinance, Cap 13)

The Application This judgment deals with the quantum of interim maintenance, inclusive of carer s allowance and Litigation Funding, ought to be paid by the respondent father pending the trial of the mother s application. The Originating Summons The present proceedings are about a 4-year old boy. He was born out of the wedlock by the parties. With the leave of the court the mother was permitted to commence the present proceedings during the time when all court proceedings were adjourned generally (abbreviated as) and the Court Registry was closed due to the Covid-19 pandemic. In her Originating Summons of 28 April 2020, the mother seeks various financial remedies including a lump sum order, a periodical payment order and a settlement of property(ies) order against the father for the benefit of their son whom in this judgment is

referred to as . Leave was also granted by this court to deal with the interim relief during the GAP on 4 May 2020 as a result of which, after having heard counsel for the mother and the father, I granted the sole custody and sole care and control of W to the mother with reasonable access to the father. At the same time, I ordered the father to pay to the mother an interim-interim maintenance including carer s allowance in the sum of \$557,000 per month (including \$157,000 for rent) for the benefit of W. Since the tenancy agreement in respect of the mother and W s home (the Hong Kong Home) was due to expire in May 2020 and that the father did not intend to have it renewed, upon the application of the mother I also made an order restraining the father from withdrawing the rental deposit in the sum of \$471,000 so that the mother might make use of the money for the renewal of the tenancy. By an order dated 13 August 2020, the interim-interim maintenance of \$557,000 has been extended on the same terms. Parties Background I believe the following facts are not in dispute. This is a cross-cultural relationship. The mother is Caucasian American, and aged 32. The father is 53 years old, a Chinese mainlander with the right to reside in Hong Kong. The parties met in October 2015 when the mother was living in Shanghai and the father was in Shenzhen. The father is a very successful entrepreneur and billionaire. He is the CEO of a company listed in Shenzhen and is so wealthy that he occupies a ranking in Forbes. Their relationship quickly turned to an intimate one as evidenced by the fact that the mother moved to Shenzhen, staying at an apartment rented by the father and in about January 2016 the mother found herself pregnant with W. In April 2016, the mother came to Hong Kong on the strength of a visitor visa. W was born in October 2016 in Hong Kong; so he is now 4 years old. As a visitor the mother was not permitted to work in Hong Kong; she has been the primary carer of W since his birth with the assistance of 2 domestic helpers and a chauffeur. A Ranger Rover worth \$2.5 million was also bought for her use. In May 2016, a 3-bedroom apartment at the Mid-Level, Central at a monthly rental of \$150,000 was found as the home for the mother and W while apparently the father had his own residence in Kowloon. There had been two 2-year tenancy agreements in the joint names of the father and the mother up until May 2020 when the 2nd tenancy agreement expired. At the time of its expiry the monthly rental was \$168,000. This is the Hong Kong Home referred to in [5] above. The mother took W to Los Angeles (), the United States, in early January 2020. She said it was meant to be for about 2 weeks and the father was informed of the planned trip. As things turned out, due to the worsening of the Covid-19 situation in Hong Kong and with W s school and extracurricular activities being suspended indefinitely, the mother decided to extend her stay. The mother and W are currently staying at a leased vacation home in LA. The mother is not a resident of Hong Kong. As of now until the end of this year, all non-Hong Kong residents coming from overseas countries and regions by plane will be denied entry to Hong Kong. She is hoping to return to Hong Kong as soon as she possibly can. The Nature of their Relationship The parties agreed they came to know each other through a dating website but the agreement ends there. The father said their relationship was, put it in neutral term, a mutually beneficial arrangement whereby the mother was paid a salary and an accommodation for the intimate relationship. Before moving to Hong Kong, the price he paid for the mother to move from Shanghai to stay with him in Shenzhen was RMB 100,000 plus a leased apartment at a monthly rental of RMB 30,000. The father is adamant that it was not part of the mutually beneficial arrangement that the mother should fall pregnant. The mother denied any

arrangement ever existed. She claimed she was induced into the relationship in that the father misrepresented that he was a divorcee but in fact he was married with children. What is more, the father is a philanderer and has had relationships with at least another woman with whom he has a child. The mother claimed upon discovering these she went into depression and suffered from ulcerative colitis around the time when she was carrying W. The father continued to be polygamous and so she is very much one of his random families. It seems the father does not dispute the mother's assertion that he was already married when the relationship began. Both agreed their relationship has ended. The mother said they stopped having sexual relations in October 2018 because it was the time the father failed to visit her for 11 months. On the other hand, the father said he and the mother stopped having sexual relations in October 2019 and they formally separated and ended the relationship in around January 2020 when the mother left for the US with W. At this juncture, it is useful to be reminded of the point made by Bodey J in *Re P (Child: Financial Provision)* [2003] EWCA Civ 837, [2003] 2 FLR 865 at [76(ii)], quoting *J v C (Child: Financial Provision)* HYPERLINK "https://www.lexisnexis.com/in/legal/search/runRemoteLink.do?A=0.49299869556845033&bct=A&service=citation&risb=21_T28018176416&langcountry=GB&linkInfo=F%23GB%23FLR%23vol%251%25sel1%251999%25page%25152%25year%251999%25tpage%25154%25sel2%251%25" \t "_parent"

[1999] 1 FLR 152 at 154 B that, considerations as to the length and nature of the parents relationship and whether or not the child was planned are generally of little if any relevance, since the child's needs and dependency are the same regardless. The Mother's New Relationship The mother has had a new relationship with a gentleman whom I will refer to as in this judgment. GB is clearly a person of considerable means too. He is the son of a billionaire in Hong Kong who is also featured in Forbes with net worth of US\$ 1.5 billion. The evidence suggests that the mother's intimate relationship with GB started in around April 2019. GB has also been staying in LA and seeing the mother and W there though it is unclear as to whether he has been cohabitating with the mother and W. The Main Application The parties have since exchanged their evidence and the trial on financial remedies has been fixed to commence in February 2021 with 5 days reserved. The Mother's Stance It is not in dispute that during the relationship, at least as from May 2018 till about March 2020, the father was making payment to the mother in the total sum of \$400,000 each month. On the top of this was the monthly rental of the Hong Kong Home that was \$150,000 at the beginning and was \$168,000 when it expired in May 2020; hence, a total of \$568,000 per month. Before August 2018 the mother also had unlimited use of the father's credit card and some cash allowances. The mother has been adamant that W's habitual residence is Hong Kong; she and W would return to Hong Kong as soon as the situation permits. Therefore, notwithstanding that the mother and W were stranded in LA when the tenancy of the Hong Kong Home expired, the mother renewed the tenancy in her own name in May 2020 for another 2 years at a monthly rental of \$157,000. The view taken by the mother is that the Hong Kong Home has been W's home since his birth a place which he is familiar with. He would be missing his secured home environment, including his nanny and other domestic staff as well as his friends from school. A young

child at his age very much requires stability and a sense of security. The mother is keen to maintain the status quo the accommodation and all the persons involved in the care of W. The Father's Stance Paternity is never in dispute nor is the father's liability to maintain W. The father is putting up a millionaire's defence. He is willing to continue to financially support W at a level that reflects his reasonable needs and is able to comply with any order to be made by the court. Even on the father's version, when the Hong Kong Home was rented, the rental deposit of \$450,000 was paid by him and all along the monthly rentals were paid by him up to around January this year. The father also accepted that on the top of the monthly rental, starting from May 2018 he had been paying a monthly sum of \$400,000. At one point, the father said in his 1st affirmation of 4 May 2020 that this \$400,000 covered (i) the mother salary under the mutually beneficial arrangement ; (ii) reasonable provisions for W's needs; (iii) rental for the mother and W at a less extravagant address; and (iv) the excess, which he expected to be a significant portion of \$400,000, to be saved up or invested for W's future use. At another point, in his 2nd affirmation of 7 August 2020, the father said the \$400,000 was for the maintenance of both the mother and W, with half of it, ie \$200,000 to be saved up for W's future use. The father admitted that he did not intend to have the tenancy renewed because the mother had left for LA with W for good. There was no need for the continuation of the tenancy. Further, the father suspected that the mother has been cohabitating with GB in LA so her costs of accommodation have been taken care of. The father knew little about the mother's financial situation. He raised the points that the mother has a well-established business selling luxury supplements which I shall refer to as the R Company , a company incorporated in Hong Kong and that GB is capable of providing her with generous financial support. Be that as it may, the common ground is that the mother was paid a monthly sum of \$400,000 plus the provision of the Hong Kong Home. It is on that basis that Mr Chan, on behalf of the mother, argued that the status quo, including the arrangement before the departure in January this year should be maintained pending trial of the main application. This means the father should continue to pay \$557,000 (inclusive of rental) per month until the conclusion of the trial. He emphasized the extremely high standard of living provided by the father who has a net worth of over US\$ 1.1 billion, and was historically providing around \$568,000 per month. The father's initial proposal was to pay a total sum of \$70,000 plus a rental of \$80,000 if W is to return to Hong Kong. At the hearing, the father increased the monthly sum to \$110,000. Mrs Irving, appearing for the father, argued that the mother is approaching her claim as if she were a married woman seeking a divorce with the full raft of ancillary relief claims for herself. By any yardstick the mother's spending is excessive, and inflated for the purpose of this litigation. \$400,000 plus a top-end apartment for a young toddler would be far more than is required to meet his reasonable needs even on a very generous standard.

Legal Principles The mother's main application for maintenance is made pursuant to Section 10(2) of the Guardianship of Minors Ordinance, Cap 13 (). This will be dealt with at the trial; so it is unnecessary to set out the relevant provisions here. Suffice to say is the court may make maintenance orders such as a lump sum order, periodical payment order, transfer of property order or settlement of property order as the court thinks reasonable

having regard to the means of that parent. It has been repeatedly affirmed in judicial decisions that in considering the mother's budget, at least in bigger money cases, the court should paint with a broad brush, not getting bogged down in detailed analyses and categorisations of specific items making up opposing budgetary presentations. Rather, the court should do its best to achieve a fair and realistic outcome by the application of broad commonsense to the overall circumstances of the particular case: see *Re P (Child: Financial Provision)*, supra, as per Bodey J, at [77(i)]. The mother's application for interim relief is brought pursuant to Section 13(3) of GMO, the relevant provision of which reads as follows, (13)(3) On an application under section 10 the court may, in any case where it adjourns the hearing of the application for more than 7 days, make an interim order, to have effect until such date as may be specified in the order and containing requirement is imposed; and (b) but an interim order under this subsection shall not be made to have effect after the end of the 3 months beginning with the date of the order or of any previous interim order made under this subsection with respect to the application, and shall cease to have effect on the making of a final order or on the dismissal of the application. It can be seen that same for the main application, the power to be exercised by the court under section 13(3)(a) is framed in general terms: the court may exercise the power as it thinks reasonable having regard to the means of that parent. That being the case, there is no dispute that the principles and guidelines given in judicial decisions in respect of main application under section 10(2) such as those given in *Re P (Child: Financial Provision)*, supra, and locally, in *WGL v ASB (Child Maintenance under the GMO)* [2013] HKFLR 391 are applicable. It has to be remembered that for the reason that the present application is one for an interim relief, the court did not have the benefit of seeing and hearing the parties in the witness box so the veracity of their evidence was not tested. Hence, not only that the court would have to adopt a broad brush approach, the court would also not take a long term view and what matters is the immediate and reasonable financial needs of W: see *LCTK v TKKP*, FCMP 173 of 2009 (date of judgment: 25 June 2010) at [9]. With these principles in mind, it is clear that some of the issues in dispute, where relevant, could only be dealt with at the trial when the parties evidence will be heard. Such issues may include whether the mother has been cohabitating with GB and whether the mother has been running a successful business via the R Company. For now, what should be in focus is the immediate and reasonable financial needs of W. Further, under section 13(3)(a) of the GMO, an interim order made by the court would have effect for 3 months from the date of the order only. This is in stark contrast with an interim order made by the court in matrimonial proceedings where normally an interim order would have effect until further order of the court or until the conclusion of the ancillary relief claim. That said, as rightly pointed out by HH Judge Chu (as she then was) in *LCTK v TKKP*, FCMP 173 of 2009, supra, at [8], there seems to be nothing to stop the court from making a further interim order pursuant to section 13(3)(a) upon the cessation of the first one. In the instance case, counsel agreed that the interim maintenance order (inclusive of litigation funding, if any) made in this judgment would be automatically renewed or extended every three months unless there is some new substance or substantial change in the circumstances. The

immediate and reasonable financial needs of W The Mother s Case The mother s case, in essence, is that the standard of living provided by the father for the maintenance of W is a very high one and this status quo should be maintained. The whole sum of \$400,000 was for W s use and there was no decision of moving out of Hong Kong. In her 1st affirmation of 23 April 2020 in support of the application, the mother said, inclusive of the rental of \$168,000, her monthly needs were \$667,000. About 2 months later, the mother s Form E, filed on 22 June 2020, disclosed a total figure of about \$950,000 per month, inclusive of both the expenses incurred in Hong Kong and LA. In the same document (Part 2 Liabilities), the mother disclosed she owed GB \$3.352 million being loans given to her for her outgoings since 2019 and for the legal costs of the present proceedings. The PWC Report In order to buttress her claim, the mother instructed a firm of accountants to conduct a review on her bank statements, credit card statements and certain receipts and invoices over the period from 1 May 2019 to 30 April 2020 and produced an Expenditure Summary . I shall call this Summary the PWC Report. According to the calculation done by PWC, during the 12-month period from May 2019 to April 2020, she spent \$5.468 million (exclusive of rental), which is on average about \$455,700 per month. The SR Report At the same time, GB also engaged another professional accounting firm to prepare a detailed analysis of his expenditure in relation to the mother and W during the period from January 2019 to April 2020. It is concluded that GB incurred a total of \$8,462,903, which means \$528,931 per month. Adding this \$528,931 to the mother s spending of \$455,700 out of her own pocket, the total sum would come up to \$984,631 per month. If one is looking at the period from January 2020 to April 2020 alone, GB spent \$3,917,178 or on average \$979,294.50 per month over these 4 months. On any view, the overall picture is that the mother has been spending well over \$1 million per month. The Father s Case The father criticised that in a span of about 2 months from her 1st Affirmation to her Form E, the mother s monthly expenses increased by \$283,000 or 42.4%. In either case, the figures are grossly inflated for the purpose of the present litigation. The father suspected that the mother has been cohabitating with GB. He also raised the point that in April 2020 the mother s credit card spending was \$90,440 but in May 2020 it increased to \$435,556. This does not show the mother was in a precarious financial position, relying on loans for living. Mrs Irving specifically drew my attention to the mother s uninhibited spending on purchases in Amazon. She submitted that the father should not be held responsible for the mother s own extravagant lifestyle with high-end fashion shopping and her spa and beauty clinic visits. Further, the mother continued to be able to afford funding her R Company in February and August 2020. Discussion As observed by Thorpe LJ in Re P (Child: Financial Provision), supra, at [47], In approaching this last decision (ie the budge that the mother reasonably requires), the judge is likely to be assailed by rival budgets that specialist family lawyers are adept at producing. Invariably the applicant's budget hovers somewhere between the generous and the extravagant. Invariably the respondent's budget expresses parsimony. These arts have been developed in [HYPERLINK "https://www.lexisnexis.com/in/legal/search/runRemoteLink.do?A=0.7268067116333109&bct=A&service=citation&risb=21_T28018176416&langcountry=GB&linkInfo=F%23GB%23UK_ACTS%](https://www.lexisnexis.com/in/legal/search/runRemoteLink.do?A=0.7268067116333109&bct=A&service=citation&risb=21_T28018176416&langcountry=GB&linkInfo=F%23GB%23UK_ACTS%23)

23num%251973_18a_Title%25"\t "_parent" Matrimonial Causes Act 1973 claims, particularly where the budget is advanced to found the calculation of the price of the clean break... . With respect, it would appear on the basis of the materials before me there is much enthusiasm on the part of the parties for these arts. I hope they do not. There may be justifiable grounds for spending so much or to be modest and these have to be dealt with at trial when the court will be able to hear their evidence. I accept W is entitled to be brought up in circumstances which bear some sort of relationship with his father's current resources and the father's present standard of living. Yet Bodey J cautioned that one has to guard against unreasonable claims made on W's behalf but with the disguised element of providing for the mother's benefit rather than for W: see: *Re P (Child: Financial Provision)* [2003], supra, as per Bodey J, quoting *J v C (Child: Financial Provision)* [1999] 1 FLR 152. Hartmann JA (as he then was) rightly reminded us that it is not to be assumed that great wealth equates to great extravagance. Some who enjoy great wealth spend with comparative modesty and with a discipline born of discretion, others enjoy consumption on a grand scale: *HJFG v KCY* [2012] 1 HKLRD 95, at [36]. The father in the present case is a billionaire but it does not mean there is no limit to the maintenance payable by him. In this regard, one has to bear in mind that W is just 4 years old. I am conscious of the mother's complaint that the father failed to make a full and frank disclosure of his expenditure. Nevertheless, no matter how extravagant, flamboyant or lavish his father's lifestyle may be, W's needs should not be substantial or as diverse as a teenager or an adolescent. An opulent lifestyle may not be for the best interest of a 4-year-old child nor is there any suggestion that for any reason he requires any special needs. At the present moment, the common-sense is that during the pandemic there should be social distancing which means there should be less entertainment in the form of dining out and hang out with friends for the health and well-being of the son. With all these in mind, I now turn to the mother's expenses as set out in her 1st affirmation of 23 April 2020 and Form E of 22 June 2020. The 1st Affirmation I have already referred to the mother's 1st affirmation where she said her monthly needs were \$667,000 with the following breakdown: General: \$334,000 (inclusive of rental: \$168,000) Personal: \$88,000 W's Expenses: \$245,000. The mother added that her personal expenses of \$88,000 and some of the holiday expenses of W (in the total sum of \$156,000 per month) were paid by GB. It would appear that most, if not all, of the items listed by the mother are attributable to expenses incurred in Hong Kong. The objective fact is the mother and W are now staying in LA and probably they cannot return to Hong Kong in the near future, whatever good wishes and intention she might have back in May this year when she made her 1st affirmation. For these reasons, I do not think it is necessary nor is it helpful to have each of the items set out here. I agree with the father's criticism over some of the items. It scratches one's head to see that when both the mother and W were absent from Hong Kong, that there was only domestic helper staying at the Hong Kong Home, and that there was virtually no need for the car, food and groceries were said to be \$50,000, Utilities were \$20,000 and Car expenses were \$25,000. When overseas travels and holidays were and are an impossibility now, W's holidays were said to be \$156,000. For these reasons, I take the view that the Hong Kong expenses that

she previously set out in her 1st affirmation are not of much relevance now. The Mother's Form E I have referred to the mother's Form E where she stated she needed a total of about 950,000 per month. I must also say the figures alone are on the very high side and in any event far exceed the monthly sums given by the father. The general expenses were said to be \$409,666; personal expenses were \$249,421 and W's expenses were \$290,385. I do not propose to have each of the items set out here. Suffice for me is to highlight some of the figures to give some flavour on how the money was said to have spent: Food expenses: \$71,615, Household expenses: \$55,926, The mother's clothing/shoes expenses: \$39,449, Entertainment expenses: \$14,830, W's meals out of home: \$39,493, W's Medical /Dental: \$28,560; W's Holidays: \$144,620; and W's Charity/donations: \$4,166. The mother added in her 3rd affirmation of 1 September 2020 that she has hired 3 private tutors for W in LA and these cost her USD17,800 (or about \$138,500) per month. The mother has pre-existing medical conditions including Trigeminal Neuralgia and required continuous treatment. She was recently diagnosed with malignant melanoma (a type of skin cancer) and had to undergo immediate biopsies and excisions. One of her domestic helpers back in Hong Kong required medical treatment for her breast cancer. In her Answer to the father's Questionnaire, the mother disclosed her vacation home in LA is \$91,650 per month. I must say the manner in which the figures were set out in the Form E are not very helpful in that no distinction was made between the expenses spent in LA and those that were incurred in Hong Kong. Further, the costs of the LA vacation home do not appear to have been included in the Form E. At the hearing, when being asked by the court what the mother and W's expenses in LA are, Mr Chan merely drew my attention to (1) the part of the PWC Report that set out the US holidays in the sum of \$301,000, (2) the SR Report which gives a figure of \$3,917,178 being the money spent by GB from January to April 2020, and (3) W's private education of about \$138,500 per month. I have to do my own calculation and I reckon that on average it should be about \$1,193,000 per month (ie (\$301,000 4 months) + (\$3,917,178 4 months) + \$138,500). This figure is much higher than the figure disclosed in Form E. Further, it is unclear whether this figure already included the expenses needed for maintaining the Hong Kong Home and the incidental expenses. Indeed, as it turned out, according to the PWC Report and the SR Report, the mother in fact spent far more than what were disclosed in her 1st affirmation and Form E. The PWC Report and the SR Report are, in my view, of little utility, at least at this interim stage. First, I give some weight to Mrs Irving's argument that the PWC Report was compiled according to the mother's instructions as to where the expenses should be apportioned, hence all holiday expenses were apportioned to W. Secondly, it is correct for Mrs Irving to have pointed out that the PWC Report and the SR report show enormous sums of expenditure. Even where all these expenses were actually incurred they do not necessarily have a correlation with reasonableness. Thirdly, it has to be borne in mind that the main issue at trial would be the quantum of maintenance payable in favour of W. As was emphasized by Thorpe LJ, an order for periodical payments is always variable and will generally have to be revised to reflect both relevant changes of circumstances and also factor of inflation. The court should discourage undue bickering over budgets: *Re P (Child: Financial Provision)*, *supra*,

at [47]. The mother has taken the unilateral move to conduct an exercise akin to auditing. Mr Chan referred me to WGL v ASB [2018] HKCFI 2615 where Chu J appointed an accountant to investigate and analyse on the actual spending of the child on the basis of evidence provided by the mother in that case: see [18(i)]. He also cited another case IDC v SSA [2019] HKFC 255 where judge CK Chan was in favour of obtaining an accountant's report: see [10] & [32]. However, it should not be forgotten that in both cases the accountant was appointed (or to be appointed) as the single joint expert of the court. In the present case, an expert, if there is one, is yet to be appointed. That is why I said the mother's move was a unilateral move. The conundrum which faces me is, how after all these comments and criticisms, to contrive an interim raft of arrangements that cater for the immediate and reasonable needs of W. I would approach this issue as follows. First, I agree with the father's criticism over some of the mother's items. In the mother's Form E, W's medical and dental treatment is as high as \$28,560 per month when the mother said her son is in good health. The mother even put \$4,166 in her Form E as Charity/Donations under W's personal expenses. Apparently, this cannot be for the immediate and reasonable needs of W. The father also raised the point that the contracted sums payable to helpers and chauffeur are inflated. The mother described in some details about the lavish holidays they had, bringing the nanny along with them. I agree with Mrs Irving that with the existing lockdown situation, holidays and travel are not happening now. This is not a matter that needs to be taken account of on an interim basis. Further, there are some merits in Mrs Irving's challenge that the mother's figures are not borne out by the evidence. Secondly, as regards W's current private education in LA that costs \$138,500 per month, its reasonableness is yet to be tested. Thirdly, I take note of the point made by Mrs Irving that the father will be unable to recover any excess payments from the mother. Fourthly, the parties are unmarried couple; the mother has no claim on her own right. Whether the relationship was one of carnal or one of romantic, it is history now. Apart from being one of the parents of W, she is not in any relationship with the father. That said, I recognise that the mother has her own financial needs as W's carer. Fifthly, another factor that has to be borne in mind is the mother's relationship with GB, who is a member of a very wealthy family in Hong Kong. I am well aware that the mother said she is no longer in a romantic relationship with this gentleman. I will come to this when I deal with the Litigation Funding issue. Sixthly, there is some evidence from the mother that the costs of living in LA are much lower than those in Hong Kong. As can be seen in the WhatsApp messages exchanged between the parties on 18 February 2020, it was mentioned by the mother that there could be better standard of living with nice house and nice car for half of the price. In her own words, 's time to think about moving W out of Hong Kong'. She was unsure about the future there (ie Hong Kong). She found some places to rent, almost half price of (the home in Hong Kong). She can save a lot of money and may be get a mortgage on a house in a few years. Seventhly, at the same time, I bear in mind that, at least in the few months to come, some monies would have to be incurred in maintaining a presence in Hong Kong pending W's return. Finally, consideration should also be given to the fact that the father continued to make payments up until March

2020. Considering all the above in the round and doing the best I can, I would give \$240,000 (being 60% of \$400,000) for W's maintenance in LA; this includes the cost of the LA vacation home. I would give another \$66,400 (being about 40% of the net-of-rental general expenses set out in the 1st affirmation) for keeping a minimum establishment in Hong Kong. On the top of these is the rental of \$157,000. The total sum is therefore \$463,400. With the arrival of this figure, it means there have been overpayments of about \$655,200 since the interim-interim order (ie $(\$557,000 - \$463,400) \times 7$ months). The latest tenancy is for a term of 2 years commencing from May 2020 and expiring on May 2022, with a Break Clause that is exercisable after the expiration of 12 months, and requires not less than 3 months prior written notice, so the earliest time for the tenancy to be terminated is August 2021. Mrs Irving made the point that by the time W returns, if indeed he is able to by early next year, he will have been away from Hong Kong for a year, with that property a distant memory. I agree. I take the view that in the circumstances, what the mother should do is to scale down her establishment in Hong Kong. For instance, she may consider keeping just one domestic helper instead of two. As regards the domestic helper who was ill, I was told there is an insurance coverage. It is hopeful the parties could co-operate with each other in obtaining the insurance reimbursement. Further, depending on the situation which may be clearer in a few months time, serious consideration on whether to keep the tenancy should be given.

Litigation Funding It is common ground that the court has jurisdiction to provide for litigation funding in GMO cases, examples of previous decisions can be found in *WGL v ASB* (Decision (Litigation Funding)), HCMP 489/2013 (date of judgment: 30 November 2017) and *IDC v SSA* (Decision (Litigation Funding)) [2019] HKFC 255, FCMP 158/2011 (date of judgment: 27 September 2019). Though I did not have the benefit of hearing counsel's arguments on the statutory basis upon which the court may make such an order for litigation funding, there were some discussions on this issue in previous cases. In *IDC v SSA* (Decision (Litigation Funding)), supra, counsel for the mother in that case contended that the answer is to be found in section 10(2), GMO (ie the main application) while the counsel for the father (who happened to be counsel for the mother in the present case) relied upon section 13(3), GMO (ie the interim maintenance). It was held by HH Judge CK Chan that an order made under section 10(2) must be a final order, subject only to appeal or a future variation if there is a change of circumstances, whereas a section 13(3) order is only an interim order which is made by adopting a broad-brush approach without the need to go into the evidence in detail and can be properly adjusted or taken in account after the final adjudication of the claim: at [17]. I agree with the view taken by the learned judge. Turning to the principles under which litigating funding may be ordered, the English Court of Appeal in *Currey v. Currey* [2007] 1 FLR 946, set out certain guiding principles on how legal funding as interim maintenance may be granted. The principles set out there have been cited and relied upon in the courts of Hong Kong. Hon B Chu J has helpfully summarised these principles in *WGL v ASB* (Decision (Litigation Funding)), supra, 6. A fundamental requirement is that the applicant has to supply a sufficiently detailed breakdown of anticipated costs; The overarching enquiry is into whether the applicant for a costs allowance can demonstrate

that he/she cannot reasonably procure legal advice and representation by any other means, and the enquiry will include: To the extent that the applicant has assets, the applicant has to demonstrate that they cannot reasonably be deployed, whether directly or as the means of raising a loan, in funding legal services; Whether the applicant cannot reasonably procure legal services by the offer of a charge upon ultimate capital recovery; Whether there is public funding available to the applicant as would furnish the applicant with legal advice and representation at a level of expertise apt to the proceedings. In the broad exercise of discretion, satisfying the above condition alone may not be sufficient, and a judge may consider that other factors must come into play, including that : The subject matter of the proceedings; The reasonableness of the applicant's stance in the proceedings, insofar as it can safely be assessed at so early a juncture; The period over which an allowance for legal costs is to be paid, and that applicants should not therefore expect that an order that the allowance be paid until the final determination of all proceedings will be the inevitable order. The Mother's Case In her 1st affirmation dated 23 April 2020, the mother admitted that her legal costs came from GB. In addition, since 2019 GB had helped paying W's and her expenses when she did not have sufficient funds. She said she need to reimburse GB. However, GB told her that he cannot continue to advance loans to her as he also has his own financial needs. He is not able nor willing to extend any further loans to her as he has no financial obligations toward W. In her Form E filed on 22 June 2020, the mother attached 2 Loans Agreements dated 16 April 2020 and 22 May 2020 respectively. The 1st Loan Agreement stated the total advancement made by GB was \$1,340,000, with the first advancement being made on 10 March 2020. When it came to the 2nd Loan Agreement, the advancement was said to have gone up to \$2,365,000. On 20 July 2020, GB advanced another sum of \$500,000 for her legal costs. Another sum of \$307,000 was advanced in about 18 August 2020 for the rental of the Hong Kong Home and the mother's household expenses. Following these payments, the total loan from GB is said to have come up to \$4,862,000, out of which, said the mother, \$3,166,000 were for her legal expenses. Bearing in mind that according to the SR Report, from January 2019 to April 2020 GB's financial assistance totalled at \$8,462,903, it would appear that anything beyond \$4,862,000 are not treated as loans. A few months later, in her affirmation in reply dated 1 September 2020 the mother said her relationship with GB has been volatile with ups and downs and is unstable. GB is hot tempered and they have frequent arguments over trivial matters. She is no longer in a romantic relationship with GB. GB has made it clear that he will not loan her further for legal costs as she should be seeking litigation funding. At the hearing of 15 September 2020 the court was provided with an estimate breakdown of \$3.6 million between then (including the hearing of 15 September 2020) and the trial, estimated to be 18 months away. Mr Chan sought, on behalf of the mother, a monthly sum of \$200,000 up to trial. By the time when the supplemental submission was lodged on 29 September 2020, the costs estimate was revised to a grand total of \$4,251,000. It is estimated that by the time of the Pre-trial Review, there would be further costs of \$650,000 and the costs for the trial, estimated to be 5 days, are assessed to be \$2,730,000. It is the mother's intention to have a senior counsel and a senior junior counsel to appear on her

behalf. After deducting the loan of \$500,000 from GB in late July and early August 2020, the mother seeks further Litigation Funding in the sum of \$3,751,000 from the father. The current firm of solicitors for the mother is already the 3rd legal team since the commencement of the proceedings in May 2020. According to the mother's latest Form H, she has already incurred \$1,012,234 and \$1,211,000 in respect of her 1st and 2nd legal teams. Taking all these previous payments together, the total costs that the mother expects to spend are a gigantic figure of \$6,763,234. There are about \$3,380,000 yet to be spent. On the other hand, the father's estimated costs for the whole proceedings are \$2,544,316, with only one counsel to be instructed. *J v J* [2014] EWHC 3654 (Fam); [2014] 11 WLUK 154; [2015] 1 Costs LO 31, [2016] 1 FCR 31; [2015] Fam Law 372 was an English case on ancillary relief claims. While the total matrimonial assets were valued at 2.9 million, the parties had spent as much as 920,000 on costs. Mostyn J said when learning this he was almost lost for words and described the costs as the scale of this madness. He gave heavy criticism on excess litigation cost and called for reform. I incline to agree with Mrs Irving that the amount incurred is quite incredible. There is no complicate point of law involved. I agree with Mrs Irving's assessment that moving forward a net sum of \$1.48 million should be a reasonable sum. The Father's Case Mrs Irving advanced two grounds in opposition to the application. The first is that the mother has assets that can reasonably be deployed and the second is she can borrow from GB. The Mother's Assets As pointed out by Mrs Irving, there is a disparity between the mother's 1st affirmation and her Form E over the liquid assets she had. In her 1st affirmation that was relied upon for interim-interim maintenance application, she stated she had a total of \$705,398 in her 3 bank accounts but did not disclose her Vanguard securities account and the money with R Company. It transpired that according to her Form E these 2 accounts had about \$1,453,000. On that basis, it was submitted by Mrs Irving that the mother actually had closed to \$2.16 million and that the mother in fact had more cash that she cared to disclose. Further, it transpired that the mother had (or has been keeping) some cash in her safe at the Hong Kong Home. The mother said she requested a friend to retrieve the cash from the safe and sent a total of \$597,000 to her in February 2020. It turned out that apart from this \$597,000, there were further sums, totalling \$253,000, deposited in July 2020. It is unclear how much cash the mother still has in the safe. It has to be recalled the mother's version is that the father stopped her credit card spending in about July 2018 and that according to her Form E her monthly expenditure was close to \$1 million. At the substantive hearing Mr Chan accepted that the mother was spending in a deficit which fortunately anything above \$400,000 from the father was covered by GB, either by way of money gifts or loans. On the mother's version there was simply no way that she was able to save. The question then is: where did the mother have the savings? The duty to give full and frank disclosure of one's financial situation applies to an applicant as much as to a respondent. In my view, the mother has not been entirely truthful about her financial resources. Borrowing from GB It is pointed out by the father that the monies that GB transferred to the mother since as early as July 2019 were not treated as loans. The father reckoned that only those received by her as from March 2020 are considered as loans. I gather that March 2020 must be about the time

when the mother contemplated taking legal action against the father. The father also challenged the veracity of the mother's alleged loan from GB that relates to the payment of her legal costs. He said according to the records, it seems in two months time from March to May 2020, a total sum of \$1.5 million were incurred which the father said on any consideration is excessive. As regards the Loans Agreements dated 16 April 2020 and 22 May 2020, there are perplexing features surrounding the making of these documents. It is to be noted that both the mother and GB signed the Loan Agreements before the same Notary Public in LA. The Loans Agreements were apparently professionally prepared and what is more, there is a charge of interest at the rate of 0.1% per annum in Clause 3 of the Agreements. One has to bear in mind the context in which these Loan Agreements were made. In about February 2020, in an email that the mother sent out in respect of W's playgroup in LA, GB was described by the mother as W's stepfather. The father adduced in his affirmation of 4 May 2020 a copy of GB's WhatsApp profile picture showing GB carrying W on his arm with the mother standing next to him, and he claimed to be W's stepfather. As I see it, the fact that GB put this photo as his profile picture showed nothing but that he and the mother were in a serious relationship. To me, this is most unusual for the parties to have taken the trouble of signing some formal legal documents when they were in an intimate and serious relationship and one side even cared to charge interest on the other. Another question is what happened to those monies given by GB prior to March 2020? Further, subsequently, at some point after the Loan Agreements were signed GB saw it fit to be represented by a firm of family lawyers to deal with the loans advanced to the mother. The mother claimed she is no longer in a romantic relationship with GB but did not say whether she is in any relationship with him. I say this because the mother said in her affirmation of 23 April 2020 that she and GB were in a platonic relationship before it turned into a romantic one. All these perplexing features surrounding the loans call for clarification. I also need to take the above analysis regarding W's needs and the mother's financial resources into the overall picture. Having regard to all these matters lead me to a conclusion that even at this preliminary stage I cannot take the mother's assertions at face value. I am mindful that I have yet to hear the evidence at the trial. At this interim stage, I am not satisfied that the mother does not have the resources, including those from GB, that she can reasonably deployed into the litigation. I decline to grant any litigation funding. Order For the reasons aforesaid, I make an order that the respondent do pay to the applicant an interim maintenance in the sum of \$463,400, with the first payment to be paid on or before 1 January 2021 and thereafter on the 1st day of each and every month. Costs I have not heard counsel's submissions on costs. I reserve this issue accordingly and I so order. (I. Wong) District Judge hD7C hD7C hD7C hD7C hD7C hD7C hFd# gdD7C gdfB gdfB gdfB gdD7C gd!, gdfB gdfB gdfB gd!, gdfB gd!, gdC0I gd!, gdfB gdC0I gd!, gd!, gdC0I gd!, gd!, gdC0I gd!, gdC0I gd!, gduJ gdC0I gd!, gdC0I gdC0I gd!, gd!, gd!, gdC0I gdC0I gd!, gd!, gdC0I gd!, gdC0I gd!, gd!, gd!, gdC0I &`#\$ gdwF &`#\$ gd!, gd.0: Mr Jeremy Chan, instructed by Chainé Chow & Barbara Hung, appeared for the Applicant Ms Frances Irving, instructed by Stevenson Wong & Co, appeared for the respondent - PAGE PAGE A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D

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Prepared on 29 October 2026 · Esheria